

ADDITIONAL CONSIDERATIONS FOR THE DEVELOPMENT OF AN INDIVIDUALIZED EDUCATION PROGRAM FOR PUPILS WITH A HEARING IMPAIRMENT

TECHNICAL ASSISTANCE GUIDELINES FOR NRS §§ 388.440(1), 388.477, and 388.520(5)

July 2014

I. BACKGROUND

Assembly Bill 210 (AB210) was passed by the Nevada State Legislature in 2013.¹ The bill, commonly referred to as the deaf/hard of hearing “Bill of Rights,” is codified in the Nevada Revised Statutes (NRS) §§ 388.440(1), 388.477, and 388.520(5), and applies to pupils with disabilities eligible for special education and related services under the provisions of the Nevada Administrative Code (NAC) Chapter 388. Collectively, the bill’s provisions are referred to as “AB210.”

Legislative history suggests that AB210 was proposed to ensure that Individualized Education Program (IEP) teams address the unique learning needs of pupils with a hearing impairment, including, without limitation, deafness. To effectuate this intent, the bill enumerates specific considerations that must be addressed during IEP development. However, as required by the Individuals with Disabilities Education Act (IDEA), the IEP team remains responsible for developing, reviewing, and revising the IEP; AB210 does not redefine this responsibility.²

This document is intended to provide technical assistance for the implementation of AB210. In each section, a checkbox indicates a mandatory or permissive statutory consideration for IEP teams. Although this document includes suggestions on practices that are not prescribed by statute, these suggestions are intended to be advisory only. Nothing in this document is intended to create requirements or obligate school districts to use any particular form or means of ensuring compliance with NRS §§ 388.440(1), 388.477, and 388.520(5) or to take steps beyond those specifically required by statute.

¹ 2013 Nev. Stat., Ch. 196, §§ 1-5, 744-45 (shows original statutory language with markups)

² See N.A.C. § 388.145 (“Any educational program for pupils with disabilities in this State . . . must be administered in accordance with the provisions of this chapter and all applicable federal laws and regulations”); *see also* 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.23, 300.321, 300.324 (definition of IEP team, IEP team members, requirements for IEP development); N.A.C. § 388.281(2) (IEP committee members, hereinafter referred to as the “IEP team”)

II. **DEFINITIONS**

The provisions of AB210 are incorporated into NRS Chapter 388. As such, the definitions in Chapter 388 (NRS § 388.440) apply to the statutory provisions implementing AB210.

What is a communication mode?

Communication mode, as defined in NRS § 388.440(1), means any system or method of communication used by a person who is deaf or whose hearing is impaired to facilitate communication which may include, without limitation:

- ✓ American Sign Language;
- ✓ English-based manual or sign systems;
- ✓ Oral and Aural Communication;
- ✓ Spoken and written English, including speech reading or lip reading; and
- ✓ Communication with assistive technology devices.

What is language?

NRS Chapter 388 does not define the term “language” under its provisions applicable to pupils with disabilities.

What is the difference between language and communication mode?

The Nevada Legislature uses the terms “language” and “communication mode” when enumerating the considerations that must be addressed by the IEP team. However, as noted above, “language” is not defined. Where the Legislature fails to define a statutory term, the Judiciary – the branch of government that interprets the law – often looks to a dictionary or a practice-specific secondary authority to ascertain the plain meaning.

The 2014 Merriam-Webster dictionary defines “language” as “the system of words or signs that people use to express thoughts and feelings to each other.” Similarly, literature for those working with pupils who are deaf/hard of hearing define language as a system or set of rules used to communicate or share thoughts, emotions, or ideas.³ When comparing these definitions, the plain meaning of “language” is similar to the NRS definition of “communication mode” – “any system or method of communication used . . . to facilitate communication” While it is arguable that a system used to “express” or “communicate” thoughts is different than a system that is used to “facilitate” communication, the similarity may suggest that the terms “language” and “communication mode” are used interchangeably in AB210.

Without a clear definition for “language,” districts may choose to adopt their own practice for guiding IEP teams to address “language” considerations required by AB210.⁴ However, the definition of “communication mode” per the NRS is binding, and any interpretation of the term “language” should be consistent with the provisions and definitions governing AB210.

What are program options?

NRS Chapter 388 does not define the term “program options.” However, NRS § 388.477(1)(a) requires the IEP team to consider the “related services and program options that provide the pupil with an appropriate and equal opportunity for communication access.” While a district may choose to adopt their own practice for guiding IEP teams to consider the “program options” as required by AB210, any interpretation of the term must be in conformance with the provisions governing the “placement” of a pupil with a disability.

As a reminder, a pupil’s placement must be based on the pupil’s IEP, as decided by the IEP team, and must conform with the “Least Restrictive Environment” (LRE).⁵ Once the IEP team determines placement, a district may choose the site location for placement; the IEP team does not determine the site location.⁶

³ *Understanding Your Child’s Hearing Loss: A Guide for Parents*. BEGINNINGS For Parents of Children Who are Deaf or Hard of Hearing, Inc., Version 1.3 (2011) – available at www.ncbegin.org

⁴ See N.R.S. § 388.477(1)(c) (“shall consider . . . [t]he availability to the pupil of . . . language peers of similar abilities”)

⁵ N.A.C. §§ 388.245(4)-(6); 34 C.F.R. §§ 300.114 - 300.116

⁶ See Nevada Department of Education Complaint Investigation Report CL101113 (December 6, 2013), for a thorough discussion on placement and location – available at http://www.doe.nv.gov/Special_Education_Complaint_Reports/

III. IEP CONSIDERATIONS

When developing an IEP for a pupil with a hearing impairment, including, without limitation, deafness, the pupil's IEP team **must** consider, without limitation:

- ☐ Related services and program options that provide the pupil with an appropriate and equal opportunity for communication access (NRS § 388.477(1)(a));
- ☐ The pupil's primary communication mode (NRS § 388.477(1)(b));
- ☐ The availability to the pupil of a sufficient number of age, cognitive, academic and language peers of similar abilities (NRS § 388.477(1)(c));
- ☐ The availability to the pupil of adult models who are deaf or hearing impaired and who use the pupil's primary communication mode (NRS § 388.477(1)(d));
- ☐ The availability of special education teachers, interpreters, and other special education personnel who are proficient in the pupil's primary communication mode (NRS § 388.477(1)(e));
- ☐ The provision of academic instruction, school services and direct access to all components of the educational process, including, without limitation, advanced placement courses, career and technical education courses, recess, lunch, extracurricular activities and athletic activities (NRS § 388.477(1)(f));
- ☐ The preferences of the parent/guardian of the pupil concerning the best feasible services, placement and content of the pupil's IEP (NRS § 388.477(1)(g));

and

- ☐ The appropriate assistive technology necessary to provide the pupil with an appropriate and equal opportunity for communication access (NRS § 388.477(1)(h)).

There is no requirement for the IEP team to consider the "best feasible instruction" for a pupil, and AB 210 does not alter the definition of a "free appropriate public education" (FAPE) under the IDEA.⁷ Nonetheless, NRS § 388.477(2) provides guidance in determining the best feasible instruction to be provided to the pupil in the pupil's primary communication mode. As such, the IEP team **may** consider, without limitation:

- ☐ Changes in the pupil's hearing or vision (NRS § 388.477(2)(a));
- ☐ Development in or availability of assistive technology (NRS § 388.477(2)(b));
- ☐ The physical design and acoustics of the learning environment (NRS § 388.477(2)(c)); and
- ☐ The subject matter of the instruction to be provided (NRS § 388.477(2)(d)).

Some of the new statutory provisions provided in NRS § 388.477(1) overlap with preexisting IDEA requirements that direct IEP teams to consider "special factors." Particularly, for children who are deaf or hard of hearing, federal regulation (34 CFR § 300.324(a)(2)(iv)) requires the IEP team to consider the child's:

- ✓ Language and communication needs,
- ✓ Opportunities for direct communication with peers and professional personnel in the child's language and communication mode,
- ✓ Academic level, and
- ✓ Full range of needs, including opportunities for direct instruction in the child's language and communication mode.⁸

Note that the new considerations provided in NRS § 388.477 do not replace the IDEA requirements and Nevada's laws and regulations for IEP development. Instead, NRS § 388.477 provides mandatory additional considerations that supplement the preexisting requirements for IEP development.

⁷ See 34 C.F.R. §§ 300.1, 300.17, 300.101 (purpose of IDEA, definition of FAPE, requirements of FAPE)

⁸ Compare N.A.C. § 388.284(2)(e) (restates the cited federal regulation)

IV. PROVISION OF INSTRUCTION IN MORE THAN ONE COMMUNICATION MODE

In addition to the mandatory considerations:

- ❑ A pupil with a hearing impairment, including, without limitation, deafness, cannot be denied the opportunity for instruction in a particular communication mode solely because the communication mode originally chosen for the pupil is different from a communication mode recommended by the pupil's IEP team. (NRS § 388.520(5)(a)).
- ❑ To the extent feasible, a school district is required to provide instruction to a pupil with a hearing impairment, including, without limitation, deafness, instruction in more than one communication mode. (NRS § 388.520(5)(b)).

Legislative history suggests that the purpose of these two provisions is to ensure that the IEP team addresses the needs of a pupil with a hearing impairment as those needs evolve over time:

This prohibits a school from declining a particular mode of communication simply on the basis that it is not the prior method used by that student or the original method that was determined when their IEP was put into place. To the degree feasible, it also requires pupils have the opportunity to learn more than one communication mode. This could create the opportunity for that student to find if the mode they are using is the best for them or if they should change to another.⁹

On a final note, pursuant to NRS § 388.520(5)(b), the board of trustees of each school district is given the authority to determine the feasibility of instruction in more than one communication mode. However, any interpretation and application of the NRS must conform to the IDEA. Thus, none of the provisions in NRS § 388.520(5) should be read to: (1) predetermine the special education and related services to be provided to a pupil with a hearing impairment; (2) replace or override the responsibility of the IEP team to develop, review, and revise the IEP; and (3) limit the provision of a FAPE, as determined by the IEP team, according to the cost and/or availability of services. If a parent disagrees with the IEP team's decision, districts are obligated to ensure that prior written notice is provided to the parent before any proposed or refused action regarding the placement, identification, evaluation, or provision of a FAPE to a pupil with a disability.¹⁰

⁹ Hearing on A.B. 210 Before the Assembly Committee on Education, 77th Leg. (Nev., March 18, 2013) – available at <http://www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/ED/Final/520.pdf>

¹⁰ NAC § 388.300(8)-(10)

V. STATE OF NEVADA MODEL COMMUNICATION PLAN

To ensure compliance with all statutory provisions derived from AB210, districts may choose to adopt a form documenting the considerations addressed by the IEP team. A model form – “State of Nevada Model Communication Plan” – is provided at the end of these materials, and a description of each component of the Model Communication Plan is discussed in detail below. Although a model form is provided, the NRS does not require the adoption of any particular method or practice to ensure compliance with the statutory provisions.

For ease of understanding, it may be helpful to view the Model Communication Plan simultaneously while reading through this section of the technical assistance document.

Overview

As explained in section III above, federal regulation requires the IEP team to address the language and communication needs of a child who is deaf or hard of hearing. While the State of Nevada IEP Form includes a “Consideration of Special Factors” section where language and communication needs can be marked as addressed, the Model Communication Plan provides a uniform place to compile the pupil’s language and communication information. The form also includes all mandatory and permissive considerations provided in AB210, and can be used to document the IEP team’s efforts.

The Model Communication Plan does not organize the requirements of AB210 by statutory section, but rather organizes the considerations by topic area. Following each section, a space is provided to allow the IEP team to create an action plan for addressing any needs or concerns.

Part A: Language and Communication Needs

The Model Communication Plan in Part A provides specific evidence that the pupil's communication mode was considered, and that the feasibility of instruction in more than one communication mode was addressed by the IEP team.

Question	Statute	Explanation
1	See NRS § 388.477(1)(c)	<p>Federal regulation requires the IEP team to consider the pupil's <i>language</i> and communication needs.¹¹ However, the definition of "language" in federal law may differ from any interpretation of the meaning of "language" in the NRS. Question 1 is intended to assist IEP teams in complying with the NRS requirements derived from AB210, not federal law.</p> <p>AB210 requires the IEP team to consider the availability to the pupil of a sufficient number of language peers with similar abilities. To consider the availability of these language peers, it is necessary to consider the pupil's language.</p> <p>Check the applicable box to indicate the pupil's language.</p>
2	NRS § 388.477(1)(b)	<p>The IEP team must consider the pupil's primary communication mode.</p>
2	NRS § 388.477(1)(b) NRS § 388.440(1)	<p>Question 2 also provides a nonexclusive list of communication modes, as listed in the statute. <u>Although AB210 does not require the IEP team to consider both the receptive and expressive communication mode of a pupil, this information may be helpful in developing the IEP.</u></p> <p>Check the applicable box to indicate the pupil's primary <i>receptive</i> communication mode. Then, check the applicable box to indicate the pupil's primary <i>expressive</i> communication mode.</p>
3	Action Plan	<p>If the IEP team believes that action should be taken in response to these considerations, the case manager should document the concerns; the action plan should guide IEP development.</p>

¹¹ 34 CFR § 300.324(a)(2)(iv)

Part B: Opportunities for Communication and/or Interaction

Part B provides evidence that the IEP team considered the availability to the pupil of peers, adult models, and special education personnel.

Question	Statute	Explanation
1	NRS § 388.477(1)(c)	<p>The IEP team must consider the availability to the pupil of a sufficient number of age, cognitive, academic, and language peers of similar abilities.</p> <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p>
2	NRS § 388.477(1)(d)	<p>The IEP team must consider the availability of adult models who are deaf or hearing impaired and who use the pupil’s primary communication mode.</p> <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p>
3	NRS § 388.477(1)(e)	<p>The IEP team must consider the availability of special education teachers, interpreters, and other special education personnel who are proficient in the pupil’s primary communication mode.</p> <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p>
4	Action Plan	<p>If the IEP team believes that action should be taken in response to these considerations, the case manager should document the concerns; the action plan should guide IEP development.</p>

Part C: Services and Assistive Technology

Part C provides evidence that the IEP team considered the pupil's access to all components of the educational process, and the related services, program options, and the appropriate assistive technology necessary to ensure appropriate and equal opportunity for communication access.

Question	Statute	Explanation
1	NRS § 388.477(1)(f)	<p>The IEP team must consider the provision of academic instruction, school services and direct access to all components of the educational process, including, without limitation, advanced placement courses, career and technical education courses, recess, lunch, extracurricular activities and athletic activities.</p> <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p> <p>Check the applicable boxes to indicate services and activities available to <i>all</i> pupils. Then, check the applicable boxes to indicate the services and activities available to the pupil.</p>
2	NRS § 388.477(1)(a)	<p>The IEP team must consider the related services and program options that provide the pupil with an appropriate and equal opportunity for communication access.</p> <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p>
3	NRS § 388.477(1)(h)	<p>The IEP team must consider the appropriate assistive technology (A/T) necessary to provide the pupil with an appropriate and equal opportunity for communication access. Although the <u>NRS does not require consideration of any particular device</u>, some A/T options the IEP team may consider include:</p> <ul style="list-style-type: none">✓ Assistive listening devices✓ Augmented and alternative communication devices✓ Alerting devices✓ Hearing loop systems✓ FM systems✓ Infrared systems✓ Personal amplifiers✓ Hearing aid/cochlear implant monitoring✓ Captioned media <p>Check “yes” or “no” to document whether the IEP team has addressed this consideration.</p>
4	Action Plan	<p>If the IEP team believes that action should be taken in response to these considerations, the case manager should document the concerns; the action plan should guide IEP development.</p>

Part D: Parent Preferences

Part D provides evidence that the IEP team considered the parent's preferences.¹²

Question	Statute	Explanation
1	NRS § 388.477(1)(g)	<p>The IEP team must consider the preferences of the parent or guardian of the pupil concerning the best feasible services, placement and content of the pupil's IEP.</p> <p>Check "yes" or "no" to document whether the IEP team has addressed this consideration.</p> <p>Then, indicate the specific preferences provided by the parent.</p>
2	Action Plan	<p>If the IEP team believes that action should be taken in response to these considerations, the case manager should document the concerns; the action plan should guide IEP development.</p>

¹² NAC § 388.071(2) (parent defined to include guardian)

Part E: Optional Considerations

Part E provides evidence that the IEP team addressed the optional considerations regarding the best feasible instruction in the pupil's primary communication mode. This includes consideration of changes in hearing or vision, development in and the availability of assistive technology, the physical design and acoustics of the learning environment, and the particular subject matter of the instruction to be provided to the pupil.

Question	Statute	Explanation
1	NRS § 388.477(2)(a) (optional)	<p>When determining the best feasible instruction to be provided to the pupil in his or her primary communication mode, the IEP team may consider changes in the pupil's hearing or vision.</p> <p>Check "yes" or "no" to document whether the IEP team has addressed this consideration.</p>
2	NRS § 388.477(2)(b) (optional)	<p>When determining the best feasible instruction to be provided to the pupil in his or her primary communication mode, the IEP team may consider the development in or availability of assistive technology.</p> <p>Check "yes" or "no" to document whether the IEP team has addressed this consideration.</p>
3	NRS § 388.477(2)(c) (optional)	<p>When determining the best feasible instruction to be provided to the pupil in his or her primary communication mode, the IEP team may consider the physical design and acoustics of the learning environment.</p> <p>Check "yes" or "no" to document whether the IEP team has addressed this consideration.</p>
4	NRS § 388.477(2)(d) (optional)	<p>When determining the best feasible instruction to be provided to the pupil in his or her primary communication mode, the IEP team may consider the subject matter of the instruction to be provided.</p> <p>Check "yes" or "no" to document whether the IEP team has addressed this consideration.</p>
5	Action Plan	<p>If the IEP team believes that action should be taken in response to these considerations, the case manager should document the concerns; the action plan should guide IEP development.</p>

**STATE OF NEVADA
MODEL COMMUNICATION PLAN**

Student		Eligibility	
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A. LANGUAGE AND COMMUNICATION NEEDS

1. What is the pupil's **language**? (**See NRS 388.477(1)(c)**)

	American Sign Language
	Other Signed Language
	Spoken English
	Other Spoken Language
	Other, please explain:

2. What is the pupil's primary receptive and expressive **communication mode**? (**NRS 388.477(1)(b); NRS 388.440(1)**)

Receptive		Expressive	
	American Sign Language		American Sign Language
	English based manual or sign system		English based manual or sign system
	Oral and aural communication		Oral and aural communication
	Spoken and written English, including speech reading or lip reading		Spoken and written English, including speech reading or lip reading
	Communication with assistive technology device		Communication with assistive technology device
	Other, please explain:		Other, please explain:

3. **Action Plan, if any:**

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C. SERVICES AND ASSISTIVE TECHNOLOGY

1. Has the IEP team considered the provision of academic instruction, school services and direct access to all components of the educational process? Check each applicable box to indicate access to services/activities available to all pupils, in comparison to services/activities available to the pupil. (NRS 388.477(1)(f))

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Components available to <i>all</i> pupils	Components available to the <i>pupil</i>
Advanced Placement Courses	Advanced Placement Courses
Career and Technical Education Courses	Career and Technical Education Courses
Recess	Recess
Lunch	Lunch
Extracurricular Activities	Extracurricular Activities
Athletic Activities	Athletic Activities
Other, please explain:	Other, please explain:

2. Has the IEP team considered the related services and program options that provide the pupil with an appropriate and equal opportunity for communication access? (NRS 388.477(1)(a))

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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3. Has the IEP team considered the appropriate assistive technology necessary to provide the pupil with an appropriate and equal opportunity for communication access? (NRS 388.477(1)(h))

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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4. **Action Plan, if any:**

Empty space for Action Plan

1. Has the IEP team considered the parent/guardian preferences concerning the best feasible services, placement and content of the pupil's IEP? (NRS 388.477(1)(g))

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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Parent/guardian preferences for best feasible services:
Parent/guardian preferences for placement:
Parent/guardian preferences for the content of the pupil's IEP:

2. **Action Plan, if any:**

[illegible]

E. OPTIONAL CONSIDERATIONS

When determining the best feasible instruction to be provided to the pupil in his or her communication mode, the IEP team **may** address, without limitation, the following questions:

1. Has the IEP team considered any recent changes to the pupil's hearing or vision? (NRS 388.477(2)(a))

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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2. Has the IEP team considered the development in or availability of assistive technology? (NRS 388.477(2)(b))

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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3. Has the IEP team considered the physical design and acoustics of the pupil's learning environment? (NRS 388.477(2)(c))

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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4. Has the IEP team considered the subject matter of the instruction to be provided? (NRS 388.477(2)(d))

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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5. **Action Plan, if any:**

